IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.479 OF 1990

Shri P.K.Jain, Asstt.
Collector of Customs .. Appellant

versus

Nisar Ahmed Mohammed Yusuf
Ansari & 3 ors. .. Respondents

...

None for the appellant.

None for the respondent.

CORAM : V.M. KANADE, J

DATED : 29th October 2004.

ORAL ORDER:-

1. With the assistance of Shri D.P. Adsule, Learned APP, I have gone through the judgement and order passed by the trial Court.

2. The State is challenging the judgement and

order passed by the Addl.Chief Metropolitan Magistrate, 22nd Court, Esplanade, Bombay. By the said judgement and order dated 22nd December 1989 in Criminal case no.116/CW/87, the trial Court acquitted the accused nos.1, 2, 3 and 5 of the offence with which they were charged under the Customs Act.

3. I have perused the judgement and order passed by the trial Court with the assistance of the learned APP appearing on behalf of the State who has also taken me through the evidence adduced on behalf of the prosecution.

4. In the present case, the goods were seized from different rooms in a building. The contraband consisted 17 gunny bags containing synthetic textile of foreign origin valued at Rs.3,62,991/-. The goods admittedly were seized by police Officers and thereafter, investigation was handed over to the Customs authorities. The customs authorities did not record the statements of the eye witnesses and other Officers. The confessional statements which were recorded by the Customs Officials were later on retracted by the accused. In the adjudication proceedings, the goods were confiscated and an amount

of Rs.30,000/- was imposed as fine. Since the seizure was made by the police, the presumption which is raised u/s.124 of the Customs Act is no longer available with the prosecution. Thus, the prosecution has not adduced evidence to prove that the seized goods were smuggled goods. Further there is a serious lacunae in the prosecution case as the statement of the eye witness who seized the contraband goods was not recorded by the Customs Officer who was carrying out the investigation.

5. In my view, the finding recorded by the trial court cannot be said to be unreasonable or perverse.

6. Appeal is dismissed.

V.M.KANADE, J